

SPEAKING WITH SILENCE

New York's Art Authenticators are Losing their Voices

Why do we need art authenticators?

So museum-goers, gallery owners, buyers and sellers know that the artwork they are looking at is genuine and authentic. The integrity of the art market and of the important institutions where art is displayed is dependent upon the authenticity of a piece of art.

Why are authenticators being silent?

An increasingly hostile, litigious environment has raised insurance costs and created levels of risk and legal expense that have driven people from the field. While in the course of rendering opinions in good faith about the authenticity, attribution or authorship of artworks on a variety of theories, authenticators are often sued to call into question their findings. The costs of vindication for authenticators are great: thousands of hours and dollars spent on legal defense. Even carrying liability insurance (which can be particularly burdensome to an individual authenticator) is expensive and does not always guarantee protection.

How is this affecting the art world?

Authentication boards are shutting down and art historians and scholars are going quiet. In the past few years the Pollock-Krasner Foundation, the Andy Warhol Art Authentication Board, the Roy Lichtenstein Foundation and the Jean-Michel Basquiat Estate, have all ceased authenticating works of art in the face of potential legal claims. Without authenticators to speak up, fakes, forgeries, misattributions and misinformation can flood the marketplace.

How can New York restore integrity to its world-renowned art market?

As to transactions conducted in New York, **A.107 (AM Rosenthal) / S.7536 (Sen. Serrano)** would re-incentivize authenticators to render independent, good-faith opinions about the authenticity, attribution, and authorship of works of fine art. The legislation promotes the art market, public education, and scholarship by allowing art transactions to maintain their integrity while still protecting the rights of those who bring a suit in the event of legitimate complaints.

What will the Proposed Legislation Do?

- ✓ Defines “**authenticator**” as: authors of catalogues raisonné or other scholarly texts; persons or entities recognized in the visual arts community as having expertise regarding the artist, work of fine art, or visual art multiple with respect to which the authenticator renders an opinion as to authenticity, attribution or authorship; persons or entities recognized in the visual arts or scientific community who have expertise in uncovering facts (such as forensic scientists) that serve as a direct basis for an authenticity or authorship opinion regarding a work of fine art or visual art multiple. Expressly excludes any person or entity with a financial interest in the work of fine art or visual art multiple being evaluated, other than to be compensated for the rendering of the opinion
- ✓ Requires that the complaint specify with particularity facts sufficient to support each element of each claim asserted (parallels similar requirements in CPLR Rule 3016 and Rule 9(b) of the Federal Rules of Civil Procedure).
- ✓ Includes a fee-shifting provision which grants discretion to the court to award costs and fees to the authenticator, only if the court finds good and just cause for the award, as specified in a written finding. Similar discretion already exists for a prevailing purchaser of works of art.

